IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.15 of 1995
Date of decision: 5.9.2006

The Commissioner of Income Tax, Haryana, Rohtak
....Petitioner

versus

Kamal Kishore Batra DO, LIC, Kalanaur, Rohtak.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Yogesh Putney, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for opinion of this court under Section 256(1) of the Income Tax Act, 1961 (for short, 'the Act') by the Income Tax Appellate Tribunal, Delhi Bench 'C' Delhi, arising out of its order dated 14.9.1993 in respect of assessment year 1990-91:-

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing deduction on account of expenses at 40 per cent out of the incentive bonus of Rs.45,969/- by referring to the provisions of section 10(14) as against the case of the department that the said incentive bonus formed part and parcel of assessee's income under the head "salary" and hence entitled only to standard deduction under section 16(1)?"

The assessee is an individual working as Development Officer with the Life Insurance Corporation of India. During the assessment proceedings, the assessee claimed deduction of 50% towards expenses out of incentive bonus received. This claim was rejected by the assessing officer following the judgment of the Andhra Pradesh High Court in **K.A.Chaudhary v. CIT** ((1990) 183 ITR 29). It was held that the term

"salary" included various other types of receipts including fee, commission, perquisites and profits in lieu of or in addition to salary for wages. Incentive bonus was also part of aforesaid items and was taxable under the head "salary" and only deductions falling under section 16(1) of the Act could be claimed. Expenditure could not be claimed as deduction. This view was affirmed by the first appellate authority.

The Tribunal, however, allowed deduction at the rate of 40% under section 10(14) of the Act.

Learned counsel for the revenue submits that the issue now stands covered by the judgment of this court in **B.M. Parmar v. C.I.T. (P&H)** (1999) 235 ITR 679, wherein at page 695, it was observed: -

> "In the case of a Development Officer, the incentive bonus does not appear to be a special allowance payable to him for meeting expenses wholly, necessarily and exclusively incurred by him in the performance of his duties. In the incentive bonus scheme of 1978, there is no mention that incentive bonus is payable so as to meet the expenses incurred by the Development Offices in the performance of their duties. They have been made eligible to receive incentive bonus on the number of policies procured by them and the total amount of premium collected during a year. It is also relatable to the territory in which they are required to function for the promotion of insurance business. Thus, there is nothing to show from the scheme framed by the Life Insurance Corporation of India in 1978 that incentive bonus was paid to the Development Officers as any special allowance or benefit granted to them to meet certain expenses.
>
> It is also to be noticed that section 10(14) has been amended with effect from April 1, 1989, and only such special allowance or benefit has been made eligible for exemption as is notified by the Central Government. It would be, thus, apparent that, after the amendment

effective from April 1, 1989, no exemption in respect of actual expenses incurred by the employee receiving a special allowance or benefit would be available unless it has been notified by the Central Government.

It is seen that deductions have been separately specified in section 16 for the purposes of computing the income under the head "Salaries". As noticed earlier, deduction was allowed, prior to the amendment effective from April 1, 1975, under five specific heads, namely, (i) expenditure on the purchase of books, (ii) expenditure in entertaining people connected with the employer's business, (iii) expenditure on conveyance used by the employee for the purpose of his employment, (iv) expenditure actually incurred by the employee which, by the conditions of his service, he was required to spend out of his remuneration wholly, necessarily and exclusively in the performance of his duties, and (v) amount of tax on professions, trades, callings or employments levied under any State or provincial Act. It would, thus, be obvious that, prior to the amendment effective from April 1, 1975, deductions were allowed from salary under specific heads. Thus, the statute took sufficient care about the need for deduction in respect of a salaried employee. In this light, a second deduction is not permissible."

The same view has been reiterated in the following judgments by this court in **Commissioner of Income Tax v. H.S Sandhu,** (1999) 237 ITR 167, **Commissioner of Income Tax. v. S.L.Singhal Development Officer**, (1999) 238 ITR 170, **Commissioner of Income Tax v. Chaman Lal Chandok**, (2000) 241 ITR 442, **SC Wadhwa v. CIT**, (2005) 198 CTR 503, **CIT v. A.P.Gera,** (2005) 198 CTR 506, **CIT v. SC Wadhwa, Development Officer LIC of India**, (2006) 283 ITR 384; by the Allahabad High Court in **CIT v. Ramesh Chandra Aggarwal**, (2006) 151 Taxman 179, **CIT v. Ganesh Chand Saxena**, (2006) 280 ITR 372; by the Bombay

High Court in **CIT v. Gopal Krishan Suri,** (2000) 248 ITR 819; by the Calcutta High Court in **CIT v. Ramalal Agarwala**, (2001) 250 ITR 828; by the Gauhati High Court in **CIT v. Anil Kumar Hazarika**, (2003) 182 CTR 76; by the Kerala High Court in **CIT v. T.K.Ginaradan, Development Officer, LIC of India,** (2002) 253 ITR 463, **CIT v. G.Ramachandran, Development Officer, LIC of India,** (2003) 130 Taxman 467, **CIT v. C.P.Gangadharan**, (2004) 186 CTR 363; by the Rajasthan High Court in **RP Khunteta v. CIT**, (2002) 177 CTR 312, **HM Pareek v. CIT**, (2002) 257 ITR 790; by the Madhya Pradesh High Court in **CIT v. Gurudeo Singh Jaggi,** (2004) 267 ITR 763 and by the Madras High Court in **CIT v. P.Arangawamy and others,** (2002) 242 ITR 563.

In view of above, the question is answered in favour of the revenue and against the assessee.

(Adarsh Kumar Goel)
Judge

September 5, 2006
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(Rajesh Bindal)
Judge